

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JESUS MANUEL VELASQUEZ-RINCON,

Petitioner,

v.

WARDEN, F.C.I. HERLONG,

Respondent.

No. 2:23-cv-0837 WBS CKD

ORDER

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Petitioner, proceeding pro se, has filed an application
for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

(Docket No. 1.) The matter was referred to a United States
Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local
Rule 302.

On January 8, 2024, the Magistrate Judge filed findings
and recommendations recommending that the case be dismissed under
Local Rules 182(f) and 110 based on petitioner's failure to keep
the court apprised of his current address. (Docket No. 13.) The
findings and recommendations were mailed to all parties and which

1 contained notice to all parties that any objections to the
2 findings and recommendations were to be filed within fourteen
3 days.¹ Neither party has filed objections to the findings and
4 recommendations.

5 The court agrees that the case should be dismissed,
6 though for different reasons than the recommendation of the
7 Magistrate Judge. Based on the record, it appears that
8 petitioner has not exhausted his administrative remedies. (See
9 Hubbard Decl. ¶ 6; App. 11 (Docket No. 12-1).) Accordingly, the
10 court will grant respondent's motion to dismiss the petition for
11 failure to exhaust. See, e.g., Casellas v. Warden, FCI-Mendota,
12 No. 1:23-cv-49 SKO, 2023 WL 4535030, *3 (July 13, 2023)
13 (dismissing petition claiming BOP did not apply earned time
14 credits based on failure to exhaust).

15 Moreover, based on the record, petitioner is subject to
16 a final order of deportation. (See Hubbard Decl. ¶¶ 18-19; App.
17 12 (Docket No. 12-1).) Inmates with a final order of deportation
18 are ineligible for application of earned time credits. See,
19 e.g., Garcia v. Thompson, Civil Action No. 3:23-0495, 2023 WL
20 3483236, *1-2 (M.D. Pa. May 16, 2023). Accordingly, the court
21 will also dismiss the petition on this alternative ground.

22 Accordingly, IT IS HEREBY ORDERED that:


23 1. The court declines to adopt the findings and
24 recommendations filed January 8, 2024;

25 ¹ The court notes, however, that the Findings and
26 Recommendations mailed to petitioner were returned as
27 "undeliverable, No longer here," and that the Magistrate Judge's
28 two prior orders mailed to petitioner's address of record were
also returned as undeliverable.

2. Respondent's November 30, 2023 motion to dismiss (Docket No. 12) is GRANTED; and

3. This action is dismissed.

Dated: February 14, 2024



WILLIAM B. SHUBB

UNITED STATES DISTRICT JUDGE